

## PRIVILEGE OF THE FLOOR

Meanwhile, I ask unanimous consent that during the remarks of Mr. MOYNIHAN, Mr. LEVIN, and my own remarks, former counsel for the U.S. Senate, Mr. Michael Davidson, be allowed the privilege of the floor of the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COATS. Mr. President, on behalf of the majority leader, I ask unanimous consent that immediately following the 1 hour special order, the following Senators be recognized in order to offer the following amendments:

Senator DODD, regarding Reserve retirement, 10 minutes for debate, equally divided, and no second-degree amendments in order; Senator MURRAY, relating to burial, for up to 10 minutes, equally divided, no second-degree amendments in order; Senators MURRAY and SNOWE, regarding Department of Defense overseas abortions, 1 hour, equally divided, with no second-degrees in order prior to the vote; Senator REID, relating to striking Senator KEMPTHORNE's language, 2 hours, equally divided, with no second-degrees in order; Senator HARKIN, regarding gulf war illness, 30 minutes, equally divided, with no second-degrees in order prior to the vote.

I finally ask unanimous consent that any votes ordered in relation to any of the above-mentioned amendments be delayed, to occur in a stacked sequence at a time determined by the majority leader after consultation with the Democrat leader.

The PRESIDING OFFICER. Is there objection?

Mr. BYRD. Mr. President, reserving the right to object, and I beg the Senator's pardon; I was distracted.

The PRESIDING OFFICER. The Senator from West Virginia reserves the right to object.

Mr. COATS. Mr. President, I think this has been cleared on both sides.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The PRESIDING OFFICER. The distinguished Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Chair. I thank all Senators.

#### SUPREME COURT'S LINE-ITEM VETO DECISION

Mr. BYRD. Mr. President, the U.S. Supreme Court earlier today announced in its ruling in the consolidated cases of *Clinton v. New York* and *Rubin v. Snake River Potato Growers* that it has found the Line-item Veto Act to be unconstitutional. It did this by a vote of 6 to 3. It is with great relief and thankfulness that I join with Senators MOYNIHAN and LEVIN—and I am sure that if our former colleague, Senator Hatfield, were here he would join with us—in celebrating the Supreme Court's wise decision. Mr. President, the Founding Fathers created for

us a vision, set down on parchment. Our Constitution embodies that vision, that dream of freedom, supported by the genius of practical structure which has come to be known as the checks and balances and separation of powers. If the fragile wings of the structure are ever impaired, then the dream can never again soar as high.

Today, the Supreme Court has spared the birthright of all Americans for yet a while longer by striking down a colossal error made by the Congress when it passed the Line-Item Veto Act. For me and for those who have joined me in this fight, a long, difficult journey is happily ended. The wisdom of the framers has once again prevailed and the slow undoing of the people's liberties has been halted.

Every year, we in this Nation spend billions upon billions of dollars, we expend precious manpower, we devise greater and more ingenious weapons, all for the sake of protecting ourselves, our way of life and our freedoms from foreign threats. And, yet, when it comes to the duty—and we all take that oath with our hand on the Holy Bible and our hand uplifted, we take that oath and say “so help me, God” that we will support and defend this Constitution. And so when it comes to the duty of protecting our Constitution, the living document which ensures the cherished liberties for which our forefathers gave their lives, we walked willingly into the friendly fire of the Line-Item Veto Act, enticed by political polls and grossly uninformed popular opinion.

Now that the Supreme Court has found the Line-Item Veto Act to be unconstitutional, it is my fervent hope that the Senate will come to a new understanding and appreciation of our Constitution and the power of the purse as envisioned by the framers. Let us treat the Constitution with the reverence it is due, with a better understanding of what exactly is at stake when we carelessly meddle with our system of checks and balances and the separation of powers. If we disregard the lessons learned from this colossal blunder, we might just as well strike a match and hold that invaluable document to the flame. Unless we take care, it will be our liberties and those of our children and grandchildren that will finally go up in the thick black smoke of puny political ambition.

Edmund Burke once observed that, “abstract liberty, like other mere abstractions, is not to be found.”

If we, who are entrusted with the safeguarding of the people's liberties—and that is what is involved here—are careless or callous or complacent, then those hard-won, cherished freedoms can run through our fingers like so many grains of sand. Let us all endeavor to take more to heart the awesome responsibility which service in this body conveys, and remember always that what has been won with such difficulty for us by those who sacrificed so much for our gain can be quickly

and effortlessly squandered by less worthy keepers of that trust.

Mr. President, let me read just a few brief extracts from the majority opinion. And that opinion was written by Mr. Justice Stevens.

There is no provision in the Constitution that authorizes the President to enact, to amend, or to repeal statutes.

That is elemental. I am editorializing now—that is elemental.

Continuing with the opinion written by Mr. Justice Stevens, and concurred in by the Chief Justice and four other justices:

What has emerged in these cases from the President's exercise of his statutory cancellation powers, however, are truncated versions of two bills that passed both Houses of Congress. They are not the product of the “finely wrought” procedure that the Framers designed.

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If the Line-Item Veto Act were valid, it would authorize the President to create a different law—one whose text was not voted on by either House of Congress or presented to the President for signature. Something that might be known as “Public Law 105-33 as modified by the President” may or may not be desirable, but it is surely not a document that may “become a law” pursuant to the procedures designed by the Framers of Article I, [section] 7, of the Constitution.

If there is to be a new procedure in which the President will play a different role in determining the final text of what may “become a law,” such change must come not by legislation but through the amendment procedures set forth in Article V of the Constitution.

I close my reading of the excerpts from Mr. Justice Stevens' majority opinion. Let me read now, briefly, certain extracts from the concurring opinion by Mr. Justice Kennedy. He says this:

I write to respond to my colleague JUSTICE BREYER, who observes that the statute does not threaten the liberties of individual citizens, a point on which I disagree. . . . The argument is related to his earlier suggestion that our role is lessened here because the two political branches are adjusting their own powers between themselves. . . . The Constitution's structure requires a stability which transcends the convenience of the moment. . . . Liberty is always at stake when one or more of the branches seek to transgress the separation of powers.

Separation of powers was designed to implement a fundamental insight: concentration of power in the hands of a single branch is a threat to liberty.

The Federalist states the maxim in these explicit terms:

The accumulation of all powers, legislative, executive and, judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny.

Others of my colleagues may wish to quote further.

So what is involved here—what the Court's opinion is really saying—what is involved when we tamper with checks and balances and the separation of powers, that structure in the Constitution? What is really involved are the liberties of the people.

Blackstone says it very well in chapter 2 of book 1. Chapter 2 is titled “Of the Parliament.”